By Any Other Name: The Social and Legal Stakes of Same-Sex Marriage

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The past decade has witnessed profound changes in the social and legal position of gay and lesbian couples. The U.S. Supreme Court’s decision in Lawrence v. Texas1 in June 2003 struck down sodomy laws in those thirteen states where they remained. Five months later the Massachusetts Supreme Judicial Court rendered its ruling in Goodridge v. Department of Public Health,2 making Massachusetts the first state to fully legalize same-sex marriage. Before this ruling went into effect in May 2004, the City of San Francisco, in an unprecedented move, began issuing marriage licenses to same-sex couples. The California Supreme Court ruled on August 12, 2004 that San Francisco overstepped its authority and denied the validity of these licenses.3 Despite the ruling, these developments sparked a national debate and a renewed consciousness about the institution of marriage, the ramifications of state-sanctioned relationships, and the impact of law on the private and daily lives of same-sex couples.

In this article, I examine the significance of legal same-sex marriage for those couples seeking it in the first two jurisdictions to offer it: Massachusetts and San Francisco, California. First I offer a historical legal context for the marriages that took place starting in 2004 in these two locales. Next I give a theoretical context for understanding

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2. 798 N.E.2d 941 (Mass. 2005).
the significance of the marriages for gay and lesbian couples and their legal consciousness. I report on and analyze same-sex couples’ reasons for seeking legal marriage—as opposed to either another form of legal relationship recognition, such as domestic partnership or a non-legal wedding ritual, such as a commitment ceremony. These reasons for seeking marriage, I argue, provide a window onto the couples’ legal consciousness—in other words, how they orient to, understand, and use the law. I also examine changes perceived by the couple or individuals, as a result of legal marriage, and what these changes tell us about the effects of inclusion in—and exclusion from—the institution of marriage.

The analysis in this article is based on two forms of data: (1) a database of 1,469 surveys of same-sex couples married at San Francisco City Hall during the “Winter of Love” in February and March 2004, including demographic data as well as attitudinal data, such as the couples’ reasons for wanting to get married; and (2) one hundred semi-structured, in-depth interviews with same-sex couples married in San Francisco and Massachusetts (fifty in each locale) between 2004 and 2007. Rather than relying solely on media accounts or briefs filed by legal advocacy organizations on either side of the debate, the explicit aim of this research was to rely on the words of the subjects themselves in elucidating the personal, symbolic, material, and legal importance of and feelings about marriage for same-sex couples and its effects on their lives. The interviews occurred after the original 2004 San Francisco marriages were invalidated by the California Supreme Court and before the same court’s later decision to legalize same-sex marriage in 2008. I also did brief follow-up interviews with those couples in the summer and fall of 2008 in order to find out whether they had subsequently gotten married once it was legalized, and whether their attitudes had changed in the intervening time. These interviews were then transcribed and searched systematically

6. Of the fifty couples who were initially interviewed in San Francisco, twenty-five responded to the request for follow-up. Of these, seventeen of the couples reported they subsequently got (re)married after In re Marriage Cases, 183 P.3d 384 (Cal. 2008); one couple had split up, and in two cases one of the partners had died. The remaining five had not gotten married at the time of the follow-up interview, as they wanted to wait for the result of the November 2008 election and the fate of Proposition 8, which subsequently banned same sex marriage by amendment to the California Constitution. Cal. Const. art. 1, § 7.5. Even though these couples (and perhaps others who did not respond to the follow up) are no longer technically legally married, because the distinction of import to this
for analytical themes relating to the couples’ reasons for getting married, the types of legal consciousness they displayed, and the reported changes in their relationship as a result of marriage.

I. Historical Backdrop: The Road to Same-Sex Marriage

Though individual cases had been brought by gay and lesbian couples challenging exclusive marriage laws since the early 1970s, it was not until the 1993 Hawaii case of *Baehr v. Lewin*8 that the issue gained any national or sustained legal attention. In this case, the Hawaii Supreme Court became the first in the country to legally recognize the right to same-sex marriage under the principle of equal protection.9 Before this contested ruling could go into effect, however, the voters of Hawaii approved a state constitutional amendment banning same-sex marriage—effectively trumping the court’s decision.10 Simultaneously, the decision sent the rest of the nation into a panic about the specter of same-sex marriage, culminating in the passage of the federal Defense of Marriage Act (“DOMA”), signed into law by President Clinton in 1996, which banned federal recognition of same-sex marriage and held that the states need not recognize such unions if they are granted by another state.11

DOMA (and most of its state equivalents in Hawaii and elsewhere) has, as of 2011, never been successfully challenged in a court of appeals.12 However, in 1999 and 2000 the Vermont Supreme Court and legislature made history by creating civil unions for same-sex couples, which carry all the privileges and responsibilities of marriage at the state level, though without the label of marriage.13 These privileges and responsibilities include rights related to inheritance, child

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7. See Baker v. Nelson, 191 N.W.2d 185 (Minn. 1971).
9. Id. at 67–68.
12. Since 1995, thirty-nine states have passed their own version of DOMA, either as constitutional amendments or statutes, declaring marriage to consist of only a man and a woman. Nat’l Gay & Lesbian Task Force, State Laws Prohibiting Recognition of Same-Sex Relationships (June 30, 2009), http://thetaskforce.org/downloads/reports/issue_maps/samesex_relationships_7_09.pdf. In addition, one state, Wyoming, has a version of this law that was enacted before the federal DOMA law was passed. Id. Although different entities use different methodologies to count the number of states who have DOMA laws on the books, these numbers are considered accurate by the National Gay and Lesbian Task Force.
c custody, hospital visitation, employee benefits, and state taxes. Similar, though less comprehensive, domestic partnership laws were enacted in California in 2001 (AB 25) and 2003 (AB 205). While these statuses overcome many of the legal barriers same-sex partners face in solidifying their relationships and protecting their families, they are unlike marriage in three different but crucial ways. First, they are not truly marriages according to state definition; second, they do not include the 1,138 federal benefits associated with marriage; and third, they are not recognized across state lines. While the latter two differences have obvious material and legal ramifications, the first is largely a symbolic matter, prompting many liberal critics to compare these partnerships to the “separate but equal” doctrine that defined racial segregation until the 1954 case of Brown v. Board of Education.

It was this enduring critique, in large part, that led the Massachusetts Supreme Judicial Court to indicate in its decision in the 2003 Goodridge case that anything less than full and equal marriage rights for same-sex partners is unconstitutional. The justices in Goodridge held that, according to the Massachusetts State Constitution and the U.S. Supreme Court’s ruling in Lawrence v. Texas five months earlier, the state could not deny same-sex couples the right to marry and that the legislature and county governments were required to make the necessary changes to allow same-sex marriages to begin to take place within six months. In May 2004, after significant debate and many attempts by the then-governor of Massachusetts, Mitt Romney, to sidestep the ruling, the first entirely legal gay and lesbian marriages in U.S. history began.

15. Assemb. B. 25, 2001 Assemb., Reg. Sess. (Cal. 2001). This bill provided the first fifteen of the several hundred rights attached to civil marriage in California. Id.
Meanwhile, the issuance of same-sex marriage licenses in San Francisco, which began on February 12, 2004 at the bidding of Mayor Gavin Newsom, was brought to a halt by the California Supreme Court that March, after 4,037 marriages had been performed. On August 12, 2004, the California Supreme Court issued a decision, ruling that the mayor was not acting within his authority in making this decision and, consequently, invalidated those 4,037 marriages. However, at the same time several same-sex couples, gay rights advocacy organizations, and the city and county of San Francisco joined in a lawsuit challenging the constitutionality (under California’s state constitution) of California’s Proposition 22, passed in 2000, which defined marriage in the state as between a man and a woman. These challenges, consolidated and named In re Marriage Cases, eventually reached the California Supreme Court, and on May 15, 2008, the court overturned the state’s ban on same-sex marriage and declared marriage a fundamental right, based on the California Constitution, regardless of sexual orientation. Between the time this decision went into effect in June and the passage of Proposition 8 by popular vote in November 2008, approximately 18,000 same-sex couples were legally married in California—and remain so despite the subsequent amendment to California’s constitution banning same-sex marriages. Two years later, in the first successful federal district court challenge of a state ban on same-sex marriage, Judge Vaughn Walker ruled that Proposition 8 was a violation of the U.S. Constitution and enjoined the state from enforcing the ban.

II. Theoretical Context: Legal Consciousness and the Constitutive Perspective

This research is theoretically grounded in the socio-legal concepts of legal consciousness and constitutive studies of the meaning and role of law in social life. Legal consciousness is defined as the way
that people understand, experience, engage, use, avoid, and resist law, whether in particular moments or on a regular basis in their everyday lives.29 This tradition of socio-legal scholarship builds on the foundations of both empirical studies of the legal needs of the poor in the 1960s and 1970s, and the school of Critical Legal Studies, which in the 1970s and 1980s sought to expose and explore the oft-present gap between the “law in the books” and the “law in action.”30 These “gap studies” revealed that the workings of “law on the ground”—that is, in day-to-day settings, in courtrooms, in workplaces, and in local disputes—were much different in practice from the idealized image of law as it is written formally. Specifically, formal civil rights conferred by the Constitution, in legislation, or in case law did not necessarily translate into equality in the day-to-day lives of citizens.31 This led law and society researchers to question the doctrinal study of law and rights and to instead focus on the would-be rights-bearers themselves, their experiences in the legal context, how they viewed the place of law in their lives, and how or when they tended to invoke it.32

This understanding of “law in action” or “law on the ground” serves as the basis for a growing body of research in the field of law and society that advances the view that legality—in particular, legality involving civil rights—is constructed in interaction between the social world and the legal world.33 This perspective has been named the

29. See generally Patricia Ewick & Susan S. Silbey, The Common Place of Law: Stories from Everyday Life (1998); Sally Engle Merry, Getting Justice and Getting Even: Legal Consciousness Among Working-Class Americans (1990) (defining legal consciousness, suggesting avenues for researching it, and giving empirical examples of average citizens’ use of civil litigation and of legality operating outside the bounds of legal institutions).


32. See generally Bumiller, supra note 31; Ewick & Silbey, supra note 29.

33. See generally David M. Engel, Law in the Domains of Everyday Life, in Law In Everyday Life (Austin Sarat & Thomas R. Kearns eds., 1995) (theorizing how law can be “domesticated” and how law and everyday life construct each other mutually); The New Civil Rights Research: A Constitutive Approach (Benjamin Fleury-Steiner & Laura Beth Niel-
“constitutive” perspective because it takes the theoretical position that law and society are mutually constituted in interaction, when citizens act on and react to law, and visa versa.34 Recent studies adopting this framework have, true to their roots, aimed to draw attention to the social end of this equation—noting that the law “in the books” is not always how law is lived or experienced socially in the day-to-day lives of citizens.35 McCann, for instance, shows how even when workers’ rights are not formally implemented in ways that better the lives of citizens, the value that people attach to rights in their day-to-day lives, thoughts, and conversations is significant in itself, helping to constitute those rights by imbuing them with symbolic currency.36

Recent scholars have shown that legal consciousness can be diverse, fluid, situation-specific, and even contradictory.37 That is, one may believe that the courts and legislatures are responsible for providing everyone with equal access to marriage but also simultaneously believe these institutions are not responsible for providing equal access to health care, for instance. Because “[l]egality is among the rules and interpretive frameworks ‘that operate to define and pattern social life,’” legal consciousness may even influence how people think of social institutions such as marriage—and vice versa—in their own lives and how they conceive of social change.38 Furthermore, as McCann notes, legal consciousness is “necessarily heterogeneous in character”—because every actor brings a different social position, history, and set of beliefs and experiences, different people may come to experience and understand the law in a multitude of ways—or, as he

34. See generally McCann, supra note 33.
35. See generally EwicK & Silbey, supra note 29; The New Civil Rights Research: A Constitutive Approach, supra note 33, Kathleen E. Hull, Same Sex Marriage: The Cultural Politics of Love and Law 116 (2006) (theorizing how same-sex couples enact forms of legality through culture, outside the bounds of the law, through their participation in non-legal wedding ceremonies); Engel, supra note 33 (examining the place of law as a ubiquitous but virtually invisible factor in all facets of daily life, from family to education to medical care).
36. McCann, supra note 33.
38. Id. at 4 (citing in part EwicK & Silbey, supra note 29, at 43).
puts it, “to speak law in multiple dialects.”39 Therefore, as McCann concludes, “[w]hile legal consciousness structures the efforts of citizens to make sense of social relations, it thus dictates no particular course of action.”40 Thus, the study of legal consciousness may help to understand not only support for, but also resistance to changing concepts of marriage, or domestic relational rights in general, by both citizens and lawmakers. It may also help to understand why some people will choose to invoke their right to marriage (or other institutions), and others will not.

Rather than emphasizing the difference between “rights-giver” and “rights-bearer,” however, the constitutive perspective aims to disrupt this binary opposition by conceiving of rights and legality as constructs that are given meaning in the back-and-forth processes of enacting law and acting upon it (or resisting it). In this case, the act of marrying is one-half of the constitutive process that gives meaning to the state’s decision to extend—or revoke—marriage rights. In this article, my primary analytical interest is in people’s reasons for seeking legal marriage and what they hoped it would bring to them. These reasons help to elucidate lesbian, gay, bisexual, and transgendered (“LGBT”) citizens’ legal consciousness—as defined previously, how people understand or relate to law (or don’t)—and how they rationalize their actions vis-à-vis the law. Because the study of any type of rights or legal mobilization is incomplete without an understanding of why, how, and when people act on law or resist it, a focus on the legal consciousness of citizens is of central theoretical importance. Because such an understanding tells us how, when, and why marginalized groups will act on or use the legal rights available to them—or, conversely, react against or try to change those laws they view as unfair—it is of practical importance as well. As Bumiller notes in The Civil Rights Society, “rationalizations are important because people act on them.”41 As will be shown by the findings below, changes in legal consciousness based on particular experiences greatly impact citizens’ sense of civic inclusion, confidence, and personal and social interactions.

This analysis of peoples’ reasons for seeking marriage draws heavily on the insights of Patricia Ewick and Susan Silbey, who, in their book The Common Place of Law, give a detailed account and analysis of the range of legal consciousness among regular citizens in their day-

39. McCann, supra note 33, at 283.
40. Id.
to-day lives. Based on their findings in a variety of settings, they offer a series of "stories" that form a template of types of orientations vis-à-vis the law: (1) Before the law—meaning that the citizen orients to the law as a subject, detached from it but subservient to it; (2) With the law—meaning a citizen sees oneself as an active participant who can "play the game" of law, manipulating it to serve his/her instrumental needs; and (3) Against the law—where the citizen sees the law as an opposing force against which he or she engages in struggle and resistance. Using this typology of orientations to law, or forms of legal consciousness, as a framework, I grouped couples' reasons for seeking legal marriage according to the type of legal consciousness that it seems to demonstrate. In the context of same-sex marriage, this meant that the "before the law" orientation implied a deference to the law and often a search for validation or legitimation. (These might be called "symbolic" or "civic" reasons for seeking marriage.) "With the law" represented a hope to use the law to achieve certain instrumental ends, such as legal or financial rights and responsibilities. "Against the law" here implied the use of marriage as a protest or for some other political or oppositional motivation. After an initial piloting of the survey and through discussion with the couples to be interviewed, I found that an additional category was needed. I called this orientation "Outside the law" and used it to refer to those who were seeking a legal institution, marriage, to provide entirely non-legal (e.g., personal) benefits or results.

III. Findings: Couples Before, With, Against, and Outside the Law

Demographically, the population of respondents to the survey in this study was not dissimilar from what we know about the overall population of those who married in San Francisco in 2004—and along several dimensions, with what we know about the overall same-sex married population in California. These demographics depict a stable, professional, older set of people, largely female, with longstanding

42. EwicK & silbey, supra note 29.  
43. Id. at 165.  
44. See Gary J. Gates, The Williams Inst., Same-Sex Spouses and Unmarried Partners in the American Community Survey, 2008 (2009) available at http://www.law.ucla.edu/williamsinstitute/pdf/ACS2008FullReport.pdf. See also Verta Taylor et al., Culture and Mobilization: Tactical Repertoires, Same-Sex Weddings, and the Impact on Gay Activism 74 AM. SOC. REV. 865, 875 (2009) (finding that 57% of participants were women, 55% were between the ages of thirty-six and fifty, couples had been together on average twelve years, 88% were Caucasian, and most had a college degree).
Of the 1,469 survey respondents, ages ranged from twenty to eighty-two, with the average age being forty-four. This is significantly older than the average age of heterosexual couples at the time of marriage. Couples had been together anywhere from three months to forty-seven years (with an average of eleven years)—much longer than the average heterosexual couple before they marry (for obvious reasons, due to their previous lack of access to the institution). Household income ranged from $10,000 per year to $1.8 million per year, with an average combined income of $140,000 per year. Forty percent of these couples were male, 59.5% were female, and 0.5% identified as “other” or transgender. Thirty-six percent of these couples have children (anywhere from one to eleven per family).

These marriages were largely a Caucasian phenomenon, with 88% of respondents identifying as such (the second largest racial identification was Latin@ or Chican@ at 4%, followed by mixed race, at 3.5%). The range of their educational attainment was from eighth grade to Ph.D. and higher (e.g., a Ph.D. and J.D. or other higher degree), with an average educational attainment of seventeen years of schooling—equivalent to a four-year bachelor’s degree. Although the majority of people married lived in northern California (nearly 73%), couples also came from twenty-seven states as well as one foreign country (Nicaragua), mainly from urban areas. Perhaps predictably, a little under half (43%) identified as agnostic or atheist, while the largest single religious affiliation was Christianity at 22% (this included all protestant denominations and such gay-inclusive churches as the Metropolitan Community Church (“MCC”) and Unitarian/Universalists). Significantly, 70% were already registered domestic partners either in the state of California or their home state, and 55%

45. Survey Database, supra note 4.
46. Id.
47. GATES, supra note 44, at 6.
48. Survey Database, supra note 4. See also GATES, supra note 44, at ii.
49. Survey Database, supra note 4.
50. Id. This is largely consistent with a 2008 study by the Williams Institute at UCLA, which found that 56.6% of same-sex spouses were female. GATES, supra note 44, at 3.
51. Survey Database, supra note 4.
52. The suffix “@” denotes a neuter form of the terms.
53. Survey Database, supra note 4. The percentages of couples identifying as white versus non-white are identical to those found in the study of 2004 marriage participants by Sociologist Verta Taylor and colleagues. Taylor et al., supra note 44, at 873.
54. Survey Database, supra note 4.
55. Id.
56. Id.
had already had (non-legal) wedding or commitment ceremonies on their own. This meant that most of the couples seeking legal marriage already had access to the rights associated with marriage (at least at the state level), and many had already experienced the ceremonial aspect of marriage.

To determine their reasons for seeking marriage and their orientation to the laws of marriage, I asked surveyed couples to rate a series of statements containing reasons for getting married, on a scale of one to five, to determine how important each was to them. I also asked the same question in open-ended form in the one hundred interviews. I grouped these responses thematically based on the typology of orientations to law (or forms of legal consciousness) as outlined above. Those who were looking to law for legitimation and validation of their status as a couple (or as individuals), those for whom the “official” language of legal marriage appealed, and those who stated that “having only domestic partnership makes us feel like second class citizens” were grouped in the category of “Before the law.” Those who said they were marrying to provide security for their family, to access financial and legal benefits associated with marriage, or to increase the visibility of same-sex married couples (by adding to their numbers) as a form of strategy (i.e., motivated by instrumental reasons) were grouped in the category of “With the law.” Those who said they married to protest the government or then President Bush’s conservative agenda, wished to “change the institution of marriage,” or make a political statement about gay and lesbian rights (i.e., motivated by political or oppositional reasons) were included in the category of “Against the law.” Finally, those couples who cited primarily emotional or romantic reasons, who married to show their love for their partner, to be a part of history, or to secure greater emotional commitment and permanence in their relationship, were placed in the category of “Outside the law.”

A. With the Law: Marriage as Strategy

Although mean scores on individual items within each of these categories sometimes varied significantly, interestingly, overall the least likely group of reasons to be rated consistently as “most important” were the instrumental reasons—those that suggested a “with the

57. This proportion is slightly higher than the estimate reported by Stanford Law Professor Michael Wald in 2001 that 30–50% of same-sex couples have completed commitment ceremonies. Michael S. Wald, Same-Sex Couple Marriage: A Family Policy Perspective, 9 Va. J. Soc. Pol'y & L. 291, 314 (2001).
law” orientation.\textsuperscript{58} This is especially noteworthy given the primacy attributed to the rights attendant to marriage in public and political discourse on legal same-sex marriage.\textsuperscript{59} Individual item means for this group of reasons ranged from 3.5 (on a 1–5 scale) for “providing security for our family” to 4.1 for “receiving the legal and financial benefits of marriage.” These item means, particularly the latter, seem high until one compares them with the highest-rated items in other categories. Anecdotally, it was often (though not always) couples with children, or elderly couples (or those otherwise experiencing the illness of a partner), who rated these items highly. Often their concern was for end-of-life decision-making capabilities. One man said: “My husband’s family will try to take away our house if my husband passes first.”\textsuperscript{60} Similarly, a female couple responded: “We do not trust our families to honor our wishes. We would like to know that we are secure when one of us passes on.”\textsuperscript{61} Families with children also expressed concerns in the event of tragedy or other adversity: “We need desperately to protect each other and our children here and if something ever happened to one of us,”\textsuperscript{62} and “[w]e knew we would soon start trying to have kids and wanted to get all the legal security we could,”\textsuperscript{63} were typical responses among these couples.

One would guess that the importance placed on these legal and financial concerns would be more significant in Massachusetts where, unlike California, couples did not have the option to enter into a domestic partnership or civil union to secure these types of rights and responsibilities. For example, Neri\textsuperscript{64} spoke of the difficulties she and her now-spouse had to deal with when she underwent treatment for cancer, and they had no legal connection to one another: “[S]he and I saw the other side of what you can run into when you’re not married.”\textsuperscript{65} Bijan and his spouse also agreed, “for us it was . . . about the protection. I mean it really is 100% why we got married. Otherwise, we

\textsuperscript{58} Henceforth, “mean scores on individual items,” referring to the ratings couples gave each of those reasons on average, will be referred to variously as “individual item means” and “item means.”

\textsuperscript{59} Gerstmann, supra note 17.

\textsuperscript{60} Kimberly D. Richman, Surveys from Anonymous Respondents in California (Aug. 2005) (taken from unpublished database) (on file with author) [hereinafter Surveys from Anonymous Respondents].

\textsuperscript{61} Id.

\textsuperscript{62} Id.

\textsuperscript{63} Id.

\textsuperscript{64} All names appearing in this article are used with the respondents’ permission (or are pseudonyms chosen by the respondent).

\textsuperscript{65} Interview with Neri, in Uxbridge, Mass. (Oct. 6, 2006) (on file with author).
really didn’t need to do that.”\textsuperscript{66} April offered pragmatically: “[Marry]age] exists in our society and it offers all of these privileges that are attached to it and you would be stupid not to take advantage of them if you could in some cases, so we did.”\textsuperscript{67}

However, surprisingly, access to benefits was not the highest rated set of reasons for most couples marrying in Massachusetts, either—only fourteen of the fifty couples interviewed in Massachusetts cited such instrumental concerns as among their reasons for marrying. In fact, there was not a significant difference in the frequency with which these instrumental concerns were raised between those couples surveyed and interviewed in California and those in Massachusetts. Even among couples in California—who did have access to domestic partnership—responses on the survey suggested the de-emphasis of marrying as a way to secure rights. Comparing those couples that had already registered as domestic partners (and therefore did not need an additional status to secure state-level rights) and those who did not, couples without domestic partnerships were in fact significantly less likely to marry for instrumental reasons. Even April, who noted the practical necessity of taking advantage of the rights of marriage, followed the statement above with: “But mostly I felt like I wanted to do it as a political statement, and also because I am so romantic.”\textsuperscript{68}

B. Against the Law: Marriage as Political Statement

The next least highly rated set of reasons (notwithstanding its inclusion of the second highest rated individual item on the survey) were those that were political or oppositional in nature, here considered “against the law.” That these reasons were cited as reasons to legally marry at all may seem counterintuitive. Indeed, those couples who don’t feel aligned with legal institutions, or do not feel that they are particularly useful, may have been expected to stay away from city hall altogether. And yet, several people did see this as an important means of political protest—particularly those who were married in San Francisco. Item means in this group ranged from 3.49 (wanting to change the institution of marriage) to 4.35 (wanting to make a statement about gay rights) on the survey.\textsuperscript{69} These couples explicitly framed their marriages as acts of challenge, rebellion, and opposition.

\textsuperscript{66} Interview with Bijan, in Jamaica Plain, Mass. (March 3, 2007) (on file with author).
\textsuperscript{67} Interview with April, in Boston, Mass. (Sept. 3, 2007) (on file with author).
\textsuperscript{68} Id.
\textsuperscript{69} Survey Database, supra note 4.
One, for example, said: “It was . . . based on [our] desire to commit
civil disobedience and protest the U.S. government’s conservative
laws.”70 Another said they married to “make a statement to our freaky
president and his blind followers.”71 This couple even went so far as to
say: “Marriage itself is not so important as the politics of it.”72 Invoking
particularly potent historical imagery of rebellion, one respondent
commented, “this is perhaps our generation’s Stonewall.”73

While admittedly (and for obvious reasons, because of the less
conventional legal route taken in San Francisco), there was less of a
“protest” quality among respondents in Massachusetts, this was still
present as a theme. One couple from Massachusetts, Robyn and Peg,
reported, “getting married felt like a radical transgressive act.”74 An-
other Massachusetts couple, Johanna and Moira, stated, “it was more
in solidarity . . . . It was like a political statement. It wasn’t some emo-
tional thing like ‘Oh finally, we can make legal what we’ve known in
our hearts has been true for so long.”75 A few distinguished between
their legal wedding and their prior commitment ceremony in this re-
gard: Beth and Isabel commented, “[o]ur second marriage felt like a politi-
cal statement . . . as opposed to a marriage celebrating the won-
derful spiritual ceremony that we had initially. And it was spiritual . . . .
But it was also political . . . .”76 Some suggested that their use of tradi-
tional marital language and symbolism was transgressive and an act of
political protest in itself, as Jennifer noted after marrying her partner:

I have always believed . . . that marriage is an extremely political
subject . . . . I would say “my wife.” You know, and people would
stop and be like, “how can that be?” . . . [T]hey just could not grasp
it. So it was taking a term that was commonly used and applying it
in a different way so people would think about, “oh, right, gay peo-
ple might be able to have long-term . . . relationships.” So . . . for
me, it was a very political thing.77

At the same time, the dominance of the protest narrative of rea-
soning was not as clear or as prevalent, even in San Francisco, as some

70. Surveys from Anonymous Respondents, supra note 60.
71. Id.
72. Id.
73. Id.
author).
75. Interview with Johanna and Moira, in Cambridge, Mass. (Dec. 1, 2006) (on file
with author).
76. Interview with Beth and Isabel, in Waltham, Mass. (Aug. 30, 2007) (on file with
author).
other studies have suggested. Most notably, in what was perhaps the first published study of couples married at San Francisco City Hall in a major scholarly journal, Taylor et al. reported, “[t]he overwhelming majority of participants considered their marriages acts of protest in which they were confronting the identity categories, values, and practices of heteronormative society [citation omitted] by enacting marriage outside the boundaries of state sanction.” In the present study, however, I found that couples often rated the item about them having gotten married “to protest the government’s or president’s conservative agenda” very highly in the abstract, but when questioned about it in more detail, or when they responded to a more open-ended question on the survey asking their most important reason for getting married, they often retreated from this. They clarified that this “protest” quality was really more of a very desirable side effect than an actual reason for having gotten married. This was clear in respondents’ tones in the interviews—answers to this question were usually shouted very quickly in response, and when the respondents were asked to elaborate, they often retreated from their initial exuberance on further reflection. For instance, Joan, who initially rated the statement “to protest the government and/or president’s conservative agenda” as very important (5 out of 5) as a reason to get married, then commented,

> Well, it’s more about to make a statement. So yeah, I guess that is kind of a protest in my head. It’s like, “I don’t care if you say no. I’m gonna stand up and say yes.” So I would call that a protest. But I didn’t get married to protest. That was just a benefit.

Likewise, Nicola stated: “I wouldn’t have done it simply for political reasons, but we really enjoyed being involved in a political act; an act of civil disobedience was really appealing to us, but we could show to everybody that this is our belief. We believe in equal rights for all.”

Furthermore, most of the interviewed couples that spoke about this and rated the item highly, whether in California or Massachusetts, then commented that their reasons for marrying actually evolved from the political (e.g., marriage as a form of protest) to the personal (e.g., because they wanted to show their love for their partner and solidify their bond). As Andrew, who along with his spouse Jim was active in

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79. Taylor et al., supra note 44, at 876.


81. Interview with Nicola, in San Francisco, Cal. (Sept. 24, 2005) (on file with author).
marriage equality protests in San Francisco, reflected: “We thought that it would be much more of a political statement, ‘Yeah, we’ll do this. We’ll get married.’ But once we were there holding hands and saying our vows, it was very personal."82 Renee, from Sacramento, agreed:

[A]fter the civil disobedience, the political act, when we actually got up there and we had the lady do the ceremony parts of it in the middle of City Hall, it became hugely emotional right at that moment. So after that I think I was expecting it to be an act of civil disobedience, but afterwards it was very emotional. So the after effect was it really gave our relationship greater depth.83

Karen, from Massachusetts, noted similarly,

I would say at the moment we decided [to get married], it was a kind of between a protest, like a protest act and kind of sense of bringing our family and household together. But then once it got going—cause I cried through the entire ceremony. I mean that’s really something I’ll always remember.84

C. Before the Law: Marriage as Validation

The second most highly rated set of reasons—and the single most common among Massachusetts couples—were those that reflected a “before the law” orientation and symbolic or civic reasons for marrying. This was also the most consistently highly rated group of reasons as a whole—in other words, there was less variance between the highest and lowest item means included in this grouping. Item means ranged from 3.98 for “we had always wanted to get married and could now do it ‘officially’” and 4.16 for “having only domestic partnership makes us feel like second class citizens.”85 Many considered it an “act of public recognition”86 (as one spouse put it) and oriented to the ability to marry legally as a signal that they were finally seen as equal citizens; as one respondent from San Francisco stated: “We had a very brief taste of ‘full citizenship’ while we were technically married.”87 There was a sense that full marriage gave them validation as a couple in the public sphere; as a survey respondent in San Francisco put it,

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82. Interview with Andrew, in San Francisco, Cal. (Oct. 18, 2006) (on file with author).
83. Interview with Renee, in San Francisco, Cal. (Sept. 24, 2005) (on file with author).
85. Survey Database, supra note 4.
86. Surveys from Anonymous Respondents, supra note 60.
87. Id.
“getting married officially was a profoundly important act for us personally, a kind of validation of our lives together.” 88

These respondents also resisted any definition of marriage that did not involve legal recognition; as one put it, “[we] had already had a religious ceremony plus domestic partnership—but this didn’t make us married.” 89 Others placed great symbolic weight on the imprimatur of legitimacy given by legal marriage specifically: “The emotional ‘high’ from having a legitimate, legal marriage was the most meaningful experience!” 90 Another interviewee, Neri from Massachusetts, commented: “[M]arriage runs much more deeper [sic] than all the legal benefits, than of the financial benefits. It really is—for me, it’s a sacrament.” 91 Some of the respondents themselves were even surprised at how symbolically important access to legal marriage had become for them; as one older lesbian commented: “No matter how far or liberated or radical we’d become, that inculcated desire to be married was still there.” 92 Furthermore, ratings of these reasons were very similar in California and in Massachusetts. In interviews, many couples told stories of their families not fully accepting their spouse as a member of the family until they were legally married. As Robyn, who had previously had a public commitment ceremony with her spouse Peg, noted of their legal marriage:

I felt like we gained an acceptance among the family community. We were always accepted, but they had a framework for us. They could understand us as a couple better when we became a married couple, that they didn’t have a framework to understand what our relationship was before that. I don’t think it was taken as seriously. . . . 93

Similarly Kathy, also from Massachusetts, commented: “What I realized on the day [of her wedding] was the magnitude of the social component that our families really accepted us on par with the other relationships in my family.” 94

Likewise, a legal status without the ceremonial and civic validation of marriage did not adequately address the legitimation sought by these couples. There was very little difference between couples in

88. Id.
89. Id.
90. Id. (italics added).
91. Interview with Neri, supra note 65, at 13.
92. Surveys from Anonymous Respondents, supra note 60.
California who did and did not have domestic partnerships in their tendency to rate those reasons reflecting a “before the law” orientation as most important to them. Furthermore, many of those who had not entered a domestic partnership remarked in interviews that this was precisely the reason they had not—it did not hold the same meaning for them in terms of civic inclusion and validation as marriage. As one woman put it: “I prefer a legal marriage over civil unions or a ceremony because, one, I feel I’m worthy of that, and that’s what I want and should have . . . .”95 One couple from San Francisco, Mindy and Julie, were adamant about this point and the difference between domestic partnership and marriage:

How is it different? It’s different because it’s different. It’s not marriage and that’s the point . . . . I feel that domestic partners are my legal arrangement in my life and I feel that marriage is my emotional tie . . . . You know it’s part of how human beings have put themselves together for how long. I don’t want some new fangled label. I don’t want to be put in a different category. I want the same category as everybody else.96

Jeffrey and Art, from the San Francisco Bay Area in retrospect oriented to domestic partnership as perhaps a step toward marriage but by no means an equally significant one:

[W]hen this is all sorted out and we have full and equal marriage rights, I think we’ll look back on domestic partnership as the beginning of that. It was sort of like the foot in the door that allowed us to say this isn’t good enough. This is separate and unequal.97

Another interviewee from San Francisco, Amy, remarked on the cultural importance of the difference between the language of marriage and that of domestic partnership:

If I say, “This is my partner,” then it conveys something. But what it really conveys is that we’re not married, and we’re not married because we’re gay, so it conveys our inferiority. When I say, “This is my partner,” it conveys the fact that I am a pervert, or I am a freak, or I am not normal. Well, when I say, “This is my wife,” then it’s the opposite. It’s that she’s my wife, just like my mom is my dad’s wife. It’s the same level of commitment, the same validity.98

Carolyn, also from San Francisco, agreed that neither domestic partnership nor commitment ceremonies conveyed the same validity as marriage: “It’s like somehow this relationship is not quite up to snuff.

95. Interview with Neri, supra note 65, at 13.
96. Interview with Mindy and Julie, in San Francisco, Cal. (June 21, 2005) (on file with author).
97. Interview with Jeffrey and Art, in Alameda, Cal. (June 24, 2005) (on file with author).
98. Interview with Amy, in San Francisco, Cal. (Sept. 13, 2005) (on file with author).
You know, being married is the real thing, and you guys are just playing house or something."99

D. Outside the Law: Marriage as Romance

Finally, the most consistently rated “most important” reason for entering a legal marriage had nothing to do with the law: love and romance. While the reasons contained in the category of “Outside the law” had the largest range of item means—from 2.01 for “did it on a whim” to 4.42 for “for romantic and emotional reasons and/or to show my love for my partner,” the predominance of this latter item in couples’ rationales across the board cannot be ignored.100 In this sense, couples underscored their commonality with their heterosexual counterparts in highlighting the essence of romantic marriage; as one remarked bluntly: “Love—what other reason is there to get married?”101 Similarly, another couple explained, “[w]e chose to marry because we love each other. Fundamentally that’s what it’s all about.”102 Some intimated that, despite the rarity of opportunities for same-sex couples to marry legally, it was a crucial step in the progression of the relationship. As one commented, “Our relationship reached a different level by this experience”;103 another shared, “[w]e decided in our hearts that we are completely committed to each other and want to continue to build a life [together] . . . . For us that meant marriage.”104 Admittedly, some cited reasons that fell into the category of “outside the law” but did not specifically draw on romantic themes. These included those who felt the draw of history and their community, as one stated: “We felt the magnetic pull of others . . . and had to be part of it!”105 But far more cited reasons internal to the relationship. Furthermore, the prevalence of this theme was equally shared among couples in California and in Massachusetts. The emotional import of these legal marriages is especially striking given that more than half of the respondents had already had a marriage ceremony, presumably to fulfill these same purposes.

Often couples’ reasons for marrying overlapped between categories—for instance, marrying both for benefits and for more emotional reasons. Don, for instance, recalled:

99. Interview with Carolyn, in San Francisco, Cal. (July 5, 2005) (on file with author).
100. Survey Database, supra note 4.
101. Surveys from Anonymous Respondents, supra note 60.
102. Id.
103. Id. at 5.
104. Interview with Kathy, supra note 94.
105. Surveys from Anonymous Respondents, supra note 60.
Going in, I felt... that it was about our legal rights and making the public statement about it. And I was initially surprised to find out how much it meant to me on a personal level... It means a great deal to me still, even though legally it’s been annulled. It was very powerful on a personal level.106

Yet, many couples explicitly drew a distinction between these (emotional or “outside the law”) and other types of reasons to marry. One couple from California, Carolyn and Mona, stated, for example:

We married aware that, as a married couple, we would still be denied the rights, privileges, and benefits of marriage according to others, so why did we do it?... We are honored that by marrying we were making a statement for civil rights, but we married out of plain old-fashioned love.107

Another, from Massachusetts, waited a year after it became legal to marry specifically to convey that they were not marrying for legal reasons: “I wanted to get married because I loved her and it meant something to us. I didn’t want to do it just because of [a legal] code to follow or something.”108 Moreover, couples drew sharp distinctions between marriage and other types of unions available to them, such as domestic partnership (in California) or commitment ceremonies. This was apparent, for example, in the remarks of California couples Art and Jeffrey, as well as Mindy and Julie, quoted above, as well as others. Asked about domestic partnerships, which carry all of the same benefits as marriage in California, Bruce from San Francisco commented: “Domestic partnership is, to me, it’s more legalistic... But, the commitments that are in marriage, that’s something to me that’s much more emotional.”109

Many couples in both Massachusetts and California evolved in their reasoning, initially having either political or instrumental motivations for getting married but later coming to realize—perhaps not until the actual wedding day—the primary salience of more personal and emotional reasons. For example, Mark, from California, reflected on his thoughts at the time:

It will solve a lot of legal problems, that was my reason for doing it, and it will make Donny [his spouse] happy. I could have probably lived the rest of my life and never needed, on the emotional level that he did, to go through the ceremony. But there are things that one does because it is important to somebody else. Anyway, that’s why I went into it, and then after we got that little piece of paper, I

107. Interview with Carolyn and Mona, in San Francisco, Cal. (July 5, 2005) (on file with author).
found that it had far more meaning to me than I realized. I fell in love with him all over again.110 The same was true for most couples in Massachusetts. As Alex, from Massachusetts, commented: “[I]t really surprised me on the day of our wedding how much of an impact having it legally recognized actually had.”111 Another interviewee, Richard, reflected on the moment he and his partner were announced legal spouses:

It was just power. I cried. It wasn’t political. . . . [I]t was the emotional, “I can’t believe I’m doing this. I can’t believe that I’ve come this far from being this closeted little gay boy to a fabulous wedding . . . saying these things, that I love another man, in front of a hundred people.”112

E. Changes as a Result of Marriage
This personal, emotional evolution of sorts—as well as the actual impact of having legal marriage—emerged clearly when interviewees were asked what, if anything, had changed since they got married. This question was asked of interviewees in both California and Massachusetts. Again, there were four broad categories of responses. First, some cited tangible changes such as access to legal and financial benefits. Second, others cited internal or personal changes either to the relationship or to themselves as individuals. These changes included: a greater sense of security, permanence, and commitment in the relationship; a greater sense of authenticity (saying they felt more “real”); improved opinions about the institution of marriage; less stress, both within the relationship and individually (couples reported feeling more “relaxed”); less fighting among the spouses; and finally, a feeling that their relationship had improved in general. In the third broad category of responses were social changes, in other words, changes in the couples’ or individuals’ relations with the outside world (friends, family, colleagues, and so on). This most often included observations of change in how their friends, families, and others viewed their relationship (generally with greater legitimacy). It also included a sense that access to the terminology of marriage (for example, “my wife/husband” or “in-laws”) helped their straight friends and acquaintances understand their relationship better. Of course, the spouses experienced more “outness” as their relationship became more public. Some couples commented that others began seeing them as role models or looking to them as the “ideal couple”

111. Interview with Alex, in Newton, Mass. (Nov. 30, 2006) (on file with author).
after they were married. And finally, the fourth broad group of responses referred to what could be considered political or other “macro level” changes. These responses mostly noticed a greater sense of civic inclusion, pride, and confidence in the government and law. But they also included what couples identified as a greater sensitivity to injustice generally and perceived changes in the political atmosphere overall.

As with the couples’ reasons for marrying, there were some unexpected results when the frequency of these responses to the question of what had changed since marriage were tallied. For example, the tangible changes—the legal and financial benefits that are often at the core of lawyers’ and other advocates’ arguments for same-sex marriage—were the least common category of change. This is understandable in California, where the legal status of the marriages was in question from the start, and those marriages were ultimately invalidated. However, the percentage of couples that named these types of changes was virtually identical in Massachusetts (9% in California and 8% in Massachusetts), where such rights were not given through prior domestic partnerships, and the legality of the marriages was not in question. Among the reasons the couples asserted for marrying, in both states, personal and social changes were far more common responses.

In fact, social changes (in other words, differences in how others relate to the couple after marriage) were the most frequently emphasized by couples in both states. Overwhelmingly, the single greatest change noted was in how others oriented to them—as a couple (35% of couples in California, and 81% of couples in Massachusetts). Examples given ranged from couples’ parents or siblings to airport security personnel. One interviewee said: “People really see us as a couple and have commented about our relationship in a positive way . . . . There’s been a complete paradigm shift for myself and people around me.”\(^{113}\) Another woman, this one in Massachusetts, remarked: “[M]y boss is a Republican libertarian. . . . I think he respects me more because I’m married.”\(^{114}\)

In general, couples in both states reported more closeness with their families of origin, greater inclusion of the spouse in the family, and more frequent use of the language of “in laws.” A man wed in Massachusetts, Jesse, commented: “I definitely feel a real acceptance

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\(^{113}\) Interview with Michael and Moe, in Chatham, Mass. (Sept. 1, 2007) (on file with author).

\(^{114}\) Interview with Abby, supra note 108.
from [his husband] David’s mom and stepfather, that I didn’t feel before the wedding. I feel very, very welcome in their lives and I did not feel that [way], I think before.”115 Another, John, said:

[M]y more extended family basically stated they now saw [his husband] James as a member of the family. . . . [G]iven the reactions of some of the people in my family you would think that this relationship popped up a year or two ago—not that he had been around for eighteen years.116

The importance of the language of marriage was noted by several couples. A woman in California commented: “When I say ‘wife’ it hits me . . . that language used . . . our straight friends understand it more.”117 Similarly, a male interviewee remarked: “When I describe someone as my husband people know exactly what I’m saying. It’s no more tiptoeing around and ‘this is my partner’ or whatever.”118

In some ways, the social changes the couples experienced overlapped with the more internal, or personal, changes they felt. Sherri, who not only married in San Francisco but works as an attorney at San Francisco City Hall, commented, “the ceremony in City Hall led not only to this kind of outward feeling more a part of society, but also this inward sense of committing and being an outspoken and articulate partner in a lifetime relationship, and that felt different.”119 Similarly, a man who had married in San Francisco commented: “Growing up in the 70s with all the sorts of messages I received about what it meant to be gay, that I wasn’t legitimate. My relationships weren’t legitimate, my lifestyle wasn’t legitimate. But now there’s been a complete paradigm shift for myself and everyone around me.”120 Such internal changes, either to the individual or the couple, were noted by 56% of couples in Massachusetts and 30% of couples in California. As found above, respondents far more commonly noticed internal changes than the tangible benefits. The biggest internal shift noted was a greater sense of permanence and stability in the relationship, along with a greater sense of commitment and security. One remark, which was echoed by several other couples, was that “[w]e made a pretty significant difference . . . both of us feel more solid about things.”121 Along the same lines, another interviewee commented, “I thought, ‘Alright,

116. Interview with John, in Irvine, Cal. (May 21, 2006) (on file with author).
117. Interview with Abby, supra note 108.
119. Interview with Sherri, in Berkeley, Cal. (June 6, 2006) (on file with author).
120. Interview with Moe, in Chatham, Mass. (Sept. 1, 2007) (on file with author).
121. Interview with Kate, in Corona, Cal. (Nov. 18, 2006) (on file with author).
he really means it.’ It very much calmed an emotional storm in me.”122 Again, the importance of language was noted by couples in this context: “The fact that I could say, ‘This is my spouse.’ It, it felt more authentic.”123 There were also several individuals who felt a decrease in their own stress level. As one interviewee commented: “I was able to relax a bit. It was just the ability to take a deep breath and exhale.”124 Some also reported other individual changes, such as feeling better about themselves, both more deserving and more confident.

One couple who married in Massachusetts, Jason and Richard, had an almost comical exchange during the interview about how being legally married solidified their relationship. Their relationship had been on again/off again in the past and was generally characterized by frequent arguments. When they got married, however, this changed:

Richard: “There was a sense of, ‘Oh I’m really committed now’. I do remember right afterwards—

Jason: “It’s the sound of the door closing behind you.”

Richard: “Thinking, we can’t be the first divorced. We have to make this last at least a year ‘cause we can’t be the first divorced and resolving arguments so much quicker. I remember thinking after I was married, like it’s not going to be the end of a relationship. We’re going to talk again. It might as well be, you know, in 30 minutes rather than in three days, you know, just skip a lot of it. And initially that really shortened the time for discussion.”125

Although prior research by Hull126 has shown that couples who wed in (non-legal) commitment ceremonies reported similar feelings of increased commitment, couples in this study definitely felt more bound by the legal aspect of their marriage and, as suggested by Jason and Richard, the historic nature of their marriages.

Less frequently, especially in Massachusetts, but still significantly, couples also reported “macro-level” or political changes after their marriage. Twenty-four percent of California couples and 13% of Massachusetts couples commented on these changes, which most frequently took the form of a greater sense of civil inclusion and pride that could be interpreted as patriotic. For example, Dean, from Massachusetts, said: “I could be more out . . . [because] it reflects on the

122. Interview with Jesse, supra note 115.
126. Hull, supra note 35.
whole society. It says that this is right and this is wrong in a way with the force of law behind it.” Similarly, a man who had immigrated to Massachusetts from South America noted: “When you say, ‘I’m married’ there’s a feeling of being included. There’s a sense of pride . . . . We are part of society, part of the community. Just like everyone else.” Many responses by others were characterized by a greater sense of social justice and heightened political awareness. For example, Margarita, from San Francisco, commented: “It gave me a sense of what the world would be like without this piece of social injustice.” Another noted: “[I felt a] sense of equality that I had unconsciously boxed myself out of.” Scott, from Massachusetts, added: “I realized I was short changing myself to a degree and I didn’t feel on a subconscious level that I deserved to have everything that straight people have.”

The couples themselves were not the only ones to feel this difference. Martha and Karen, for instance, recounted conversations after the Goodridge ruling, which legalized same-sex marriage in Massachusetts, with their young son and his friends. The fact that the children noted for the first time that some parents had not been allowed to marry previously, “highlighted and marked a difference that somehow became quite profound.” Even in California, where the marriages had been nullified by the time of the interview, Jim from San Francisco remarked that he, “finally, for the first time in my life, felt the profound sense of equality.” A few respondents expressed the change in more global terms. For example, Peg commented: “[T]he change has been so much bigger than any one relationship . . . . In Massachusetts, the whole earth moved . . . . It’s hard to talk about on a daily basis because it’s so fundamental and it’s so huge.”

And yet, again, such macro-level changes are not entirely separate from other personal and social realms of change. One woman, Moira, reflected that she married out of “solidarity and commitment to the [new] law,” adding:

129. Interview with Margarita, in San Francisco, Cal. (Sept. 24, 2006) (on file with author).
134. Interview with Jim, in San Francisco, Cal. (Oct. 18, 2006) (on file with author).
But I also think that somewhere... there’s a deep emotional significance of that event that’s not just politics because it did make me burst into tears every time I really actually am able to think about it. I think, for me, what may be at the root of that is the notion of being considered a full human being.\textsuperscript{136}

Not surprisingly, and as suggested by Moira’s comment and by others like her, change was felt most profoundly across the board in Massachusetts—only 6% of couples interviewed there noted no changes since their marriage, as opposed to 24% in California.

Conclusions

Prior socio-legal research has elucidated both the importance of the language of rights\textsuperscript{137} and its limitations.\textsuperscript{138} At prior moments in the history of gay rights, the rhetoric of rights has indeed proven effective—as in the landmark cases of \textit{Lawrence v. Texas}\textsuperscript{139} and \textit{Romer v. Evans}.\textsuperscript{140} It is tempting to assume that the same would be true, as both a matter of personal resonance and a legal strategy, in the case of marriage—an institution that forms the basis for an overwhelming number of legal and financial benefits and responsibilities.\textsuperscript{141} Indeed, in some of the states where same-sex marriage has been legalized by the courts in recent years, such as Iowa\textsuperscript{142} and Connecticut,\textsuperscript{143} the successful arguments in favor of extending the right to marriage were framed in terms of equal protection. However, married couples from both Massachusetts and California overwhelmingly framed their most important reason to marry not in terms of legal privileges and responsibilities—or even in terms of equality—but in terms of love and romance. When asked to rate their primary reason for marrying among twelve possible answers (including “other”), 22% of those surveyed...

\textsuperscript{137} See McCann, supra note 33; Scheingold, supra note 31.
\textsuperscript{138} See Mary Ann Glendon, Rights Talk: The Impoverishment of Political Discourse 9, 14 (1991) (arguing that the absolute language commonly used to extol individual rights and liberties impedes national moral and political discourse); Kimberly D. Richman, (When) Are Rights Wrong? Rights Discourse and Indeterminacy in Gay and Lesbian Parents’ Custody Cases, 30 Law & Soc. Inquiry 137, 139, 148–49 (2005) (examining cases where gay and lesbian parents’ rights claims in family court backfire as a judge’s belief that rights discourse is inappropriate in the child custody context).
\textsuperscript{139} 539 U.S. 558 (2003).
\textsuperscript{140} 517 U.S. 620 (1996).
\textsuperscript{142} Varnum v. Brien, 763 N.W.2d 862 (Iowa 2009).
said the most important reason was emotional or romantic (as compared to 13% who rated as most important “to make a statement about gay rights”—the next most highly rated reason).

The respondents in this study are by no means the first to note the use of law to signify and bestow personal meaning, however. One lawyer who helped litigate the California case legalizing same-sex marriage noted: “We initially relied heavily on rights-based arguments but realized fairly early on that very few people, gay or straight, view marriage primarily as a way to get rights and benefits.”144 Indeed, the Supreme Court itself has recognized as much, most famously in Griswold v. Connecticut, establishing the right to marital privacy:

Marriage is a coming together for better or for worse, hopefully enduring, and intimate to the degree of being sacred. It is an association that promotes a way of life, not causes; a harmony in living, not political faiths; a bilateral loyalty, not commercial or social projects. Yet it is an association for as noble a purpose as any involved in our prior decisions.145

Justice Blackmun agreed, in a more general sense in regard to privacy and intimate association, in his dissent in Bowers v. Hardwick: “We protect those rights not because they contribute, in some direct and material way, to the general public welfare, but because they form so central a part of an individual’s life.”146 Other scholars who have studied same-sex marriage, and marriage more broadly, have also noted personal and emotional reasons for marrying, though usually among a list of other benefits.147 Not until the decision in California’s In re Marriage Cases, however, did the court’s official language reflect what the participants in this study make plain in regard to extending marriage to same-sex couples:

The ability of an individual to join in a committed, long-term, officially recognized family relationship with the person of his or her choice is often of crucial significance to the individual’s happiness and well-being. The legal commitment to long-term mutual emotional and economic support that is an integral part of an officially recognized marriage relationship provides an individual with the ability to invest in and rely upon a loving relationship with another

144. Email from Shannon P. Minter, Legal Director of the National Center for Lesbian Rights, to Kimberly D. Richman, Assoc. Professor of Sociology, Univ. of San Francisco (May 22, 2010) (on file with author).
adult in a way that may be crucial to the individual’s development as a person and achievement of his or her full potential.\textsuperscript{148}

Interviews with same-sex married couples confirm, in fact, the social and personal effects of their being able to enter into an “officially recognized marriage relationship.” In both Massachusetts and California, the most frequently noted change after the couple married was in the perception of others (friends, family, coworkers) of the legitimacy and importance of their relationship. Couples also noted, in large numbers, an increased sense of security and permanence in the relationship itself, as well as a greater sense of commitment, which came as the result of their legal marriage. The mutually reinforcing narratives of individual well-being and validation connected to official recognition, present in both the California Supreme Court’s decision and the voices of the couples who married, reflect a constitutive process of unusual clarity—if not, perhaps, recognizing the full range of legal consciousness among same-sex couples regarding the significance of legal marriage.\textsuperscript{149}

In fairness, one might claim that the personal and social resonance of marriage for these couples is more an artifact of the ritual than it is of the fact that it is legal. Indeed, many of the personal and social benefits and changes these couples cite—greater security in their relationship, a sense of love and commitment, and the validation of friends and family—echo the findings of Kathleen Hull’s study of legal consciousness among couples who participated in commitment ceremonies.\textsuperscript{150} Hull argues that these rituals allowed couples to enact a form of legality, even outside the bounds of the law itself (same-sex marriage was not yet legal at the time of this study). Indeed, when contrasting their prior wedding ceremony with their legal marriages, some couples admitted that they continue to celebrate the former as

\textsuperscript{148} In re Marriage Cases, 183 P.3d 384, 424 (Cal. 2008).

\textsuperscript{149} There is of course a longstanding critique of marriage as an institution and a goal for the movement within the LGBT community itself, clearly articulated over the years by several scholars and activists. See generally Nancy Polikoff, \textit{We Will Get What We Ask For: Why Legalizing Gay and Lesbian Marriage Will Not Dismantle the Structure of Gender in Every Marriage}, 79 Va. L. Rev. 1535 (1993); Nancy Polikoff, \textit{Beyond (Straight And Gay) Marriage: Valuing All Families Under the Law} (Michael Bronski ed., 2008); Paula L. Ettelbrick, \textit{Since When is Marriage a Path to Liberation?}, in \textit{The Production of Reality: Essays and Readings in Social Psychology} 454 (1994). As one would expect, those adhering to this critique are far less likely to seek legal marriage, and therefore, have their views represented in this study. However, there were several interviewees, especially in San Francisco, who claimed adherence to the queer critique of marriage and saw themselves positioned “Against the law”—at least at the outset—and nevertheless got married because they felt it was an important political act of representation and an historic event for their community.

\textsuperscript{150} Hull, supra note 35.
their anniversary. And yet, the vast majority of couples—55% of whom had had a prior ceremony—articulated a distinct meaning attributed to the fact that their subsequent marriage was legal and sanctioned by the state (or by the local government, in the case of San Francisco). Some emphasized the sense of civic pride and personal dignity that could only come from a legally binding validation of their relationship. As Courtney, from Massachusetts, explained the difference: “The commitment ceremony validated our relationship to the closest people in our lives. The legal wedding validated our relationship to our society.” Others explained that their sense of possibility was expanded when legal same-sex marriage became available—in essence, their ceiling of expectations had shifted upward. As Bob, from Massachusetts, noted:

I want this to be a complete affirmation of our long commitment, and if it is possible to do this in a legal way now . . . this is what I’d want . . . we’re as deserving of this institution [as heterosexuals], and to have it legally offered to us as anybody . . . .

No less significantly, those who had not had a commitment ceremony, previously, generally refrained precisely because it was not legal and therefore not “real” in their eyes.

Taken together, these findings—particularly the emphasis on personal and social aspects of marriage and the changes it brings—demonstrate the emotional impact and psychological import of the legal institution of marriage, specifically, and access to it. This is underscored by the fact that even couples who had had a non-legal marriage ceremony or a legal domestic partnership cited this, suggesting a unique emotional and psychological impact of legal recognition and inclusion. Conversely, the interviews also demonstrated the psychological impact of denial of access to legal marriage—couples in San Francisco got very emotional when discussing their licenses being invalidated and its effect on their sense of civic belonging. As one man from San Francisco noted:

[W]hen everything kind of fell apart and the marriages were invalidated and whatnot, it definitely deflated us, I thought. We didn’t feel believed by society anymore. It felt like a little bit of a mockery to have gone through all that and not have the desired results. It toyed with our perspectives and our emotions.

Another woman who married in San Francisco, Carolyn, discussed the deep emotional impact of having one’s marriage be the cause of litiga-

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151. Interview with Courtney, in Weston, Mass. (Apr. 9, 2007) (on file with author).
153. Interview with Andrew, supra note 82, at 6.
tion and contestation: “[i]t is impossible to describe what it’s like to marry someone with the anticipation that the court will void it the very next day.” Likewise, these findings help to answer the critique and fear generally found among people within the LGBT community that legalizing same-sex marriage will damage the rights of those who choose not to or cannot marry. By demonstrating that those who marry do not do it solely for the rights and responsibilities attendant to legal marriage, these findings help to rebut the claim that those who choose not to marry must not want those rights. After all, as these respondents demonstrate so clearly, marriage is not just about the benefits.

The relative de-emphasis by these couples of the tangible benefits of marriage also suggests that, while the language of rights and legal or financial benefits is important and carries a certain legal currency, ultimately the psychological effects of exclusion may be just as important. This is, of course, one of the important lessons of Brown v. Board of Education155—and one that the California Supreme Court began to recognize explicitly for the first time in In re Marriage Cases.156 Indeed, the LGBT rights organizations that successfully argued for marriage equality in this case did so in part by underscoring the “tremendous personal, social, and spiritual significance” of marriage and that

[.]or the individual, the core of the constitutionally protected interest in marriage is not in any particular material entitlement or benefit, but in the opportunity to enjoy the unique quality of intimacy and emotional connection, on the one hand, and the unique public validation, on the other, that are available only through marriage.157

And yet, still there is the critique, most recently in newspaper coverage of the federal challenge to Proposition 8 in California,158 that these psychological, social, and emotional components of marriage are not appropriate subject matter for the law. A recent column in the San Francisco Chronicle lamented that the trial was focusing too much on “feelings” and that these concerns were immaterial and inappropriate.159 But as legal consciousness scholars point out, these intangible—what have often been called “extralegal”—benefits very

154. Interview with Carolyn, in San Francisco, Cal. (July 5, 2005) (on file with author).
156. In re Marriage Cases 183 P.3d 384, 441 n.29 (Cal. 2008).
158. Perry v. Schwarzenegger, 09-2292, 268 F.R.D. 344 (N.D. Cal., 2010).
much impinge on peoples’ sense of citizenship and ultimately affect support and respect for the law and the state. Previous research has shown that a person’s legal consciousness may determine whether one chooses to invoke the law to protect one’s rights. As Fleury-Steiner and Nielsen note, “contemporary studies of legal consciousness show that how individuals experience law in their ordinary lives is of central importance to understanding law’s influence on societal change.”

This is because studies of legal consciousness not only reveal the perceived role of law according to the citizen being studied but also whether and how likely they are to enact their rights or turn to the law to resolve their problems. Those who don’t feel recognized or validated by legal institutions are less likely to rely on them. The result is, in effect, to disenfranchise an entire group of citizens—as rendered palpable by the words of one interviewee, who also helped litigate the marriage cases for the city of San Francisco:

I remember walking to work the next day after we got married and feeling like, “I own that sidewalk. My government stood up for me,” and I could stand on that sidewalk with everybody else and be the same as everybody else and it felt just so different, I can’t even describe it. It vanished when the Supreme Court nullified the marriages. It completely vanished.

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160. See Bumiller, supra note 31; Ewick & Silbey, supra note 29; McCann, supra note 33; Merry, supra note 29.

161. Fleury-Steiner & Nielsen, supra note 37, at 3.

162. Fleury-Steiner and Nielsen note that “consciousness of law is reflected in both people’s understandings of their rights as well as their efforts to enact those rights.” Fleury-Steiner & Nielsen, supra note 37, at 4 (emphasis in original). McCann adds that legal discourse and legal consciousness “may not rigidly determine what subjects think, but they do shape the capacity for understanding social reality, imagining options, and choosing among them.” Michael McCann, Preface: On Legal Rights Consciousness: A Challenging Analytical Tradition, in The New Civil Rights Research: A Constitutive Approach, supra note 33, at xiv.

163. Interview with Sherri, in Oakland, Cal. (June 6, 2006) (on file with author).